

In the United States Patent and Trademark Office

Application of :	Janzen and Schelp)
Filed:	November 24, 2003)
Serial No.:	10/720,909) Group Art Unit: 1641
Title:	Method and Composition) Examiner: D. Venci
	For Stabilizing)
	Liquid Reagent) Date: May 03, 2007
	Reagents)
Atty Docket No.:	DCS-9151)

Mail Stop AF
Commissioner for Patents
PO Box 1450
Alexandria VA
22313-1450

Response After Final

In response to the Final Office Action dated February 6, 2007 to which a response is now due the period of time having been extended pursuant to 37 CFR 1.17(a)(3) please consider the following amendments and remarks.

Claims 1-12 and 14-21 are pending. The Examiner has withdrawn Claims 7-12 and 17-21 as being directed to non-elected inventions. Claims 1-6 and 14-16 are under examination. Claims 7, 8 and 12 were examined in the first office action (8/24/06) without a restriction requirement. Applicants believed that requirements for restriction were to be made prior to a final office action. See M.P.E.P. 802. Moreover, the claims were rejected in the first office action. Applicants do not understand how the burden of searching on the Examiner is undue if the search has already been done and the claims had been examined. Applicants respectfully request reconsideration of the restriction. Finally, the Examiner states that Invention I requires a "fluid medium" and Invention II requires a "containing". However, both claims 1 and 7 require "a fluid medium containing". Applicants do not understand the Examiner's statements referring to "said containing".

The Specification was been objected to for informalities and under 35 U.S.C. §112 First Paragraph. The claims have been objected to under 35 USC §§112, second paragraph and 102(b).

Objections

To the Specification:

The Examiner objected to the Specification for various informalities. Applicants believe that most issues have been fully addressed by both the Examiner and the Applicants and Applicants arguments do not need to be repeated. However, one objection was perhaps not fully addressed in prior responses. The Examiner states that "Specifically, Examiner objects to the general contents of paragraphs [0035], [0040], [0041], [0043] and Tables 1-6 from reference to, and reliance upon data obtain[ed] from commercially manufactured LOCI ™ TSH and FT3 assays." The Examiner states that the specification does not disclose the contents of each of the assays or the experimental protocols for using the assays. The Examiner states the requirements of 35 USC §112, first paragraph are not merely limited to claimed subject matter, but are applicable to Applicants' entire specification. The statute states: "The specification shall contain a written description of the invention, and of the manner and process of making and using it in such clear, full, and concise language so as to enable any person skilled in the art to which it pertains . . . to make and use the same. . .". There is no requirement to include what is already known in the art and in fact case law holds that Applicants should omit what is known. The specification satisfies the requirements of the statute.

Rejections

§112, Second Paragraph and §102

Claims 12 and 14 remain rejected under §112, second paragraph and claims 1-6 and 14-16 remain rejected under §102(b). With reference to the §112, Second paragraph Applicants arguments have been fully set forth in previous responses and will not be restated.

§102 Rejections

1. The Examiner again rejected claim 1-6, 14-16 as being anticipated by Ullman et al. (US 6,406,913). The Examiner states that the amendment adding "capable of selectively binding dissociated first binding species without detrimentally affecting the signal strength" does not structurally differentiate the invention from Ullman et al.

Applicants ask the Examiner to review the phrase as a whole. The second substrate has binding partners capable of selectively binding dissociated first binding species without detrimentally affecting the signal strength.

The binding partners disclosed in Ullman et al. do not disclose or suggest that the partners selectively bind dissociated first binding species. In fact and to the contrary, Ullman et. al. at lines 33 to 34 state that preferably the photosensitizer and chemiluminescent molecules are incorporated into particles and the sbp (specific binding partner) members are attached to the particles. There is no selective binding of the binding partners in Ullman et al. to dissociated first binding species. The language in the claims describes the second substrate and serves to distinguish the claims structurally from Ullman et al in much the same way as an antibody specific to hCG does not anticipate an antibody specific to cyclosporine.

Thus, Applicants respectfully request that the rejection be withdrawn.

Applicants submit that the remarks overcome the Examiner's objections and rejections. The Examiner is encouraged to contact the undersigned if the Examiner has any matter that the Examiner would like to address.

Respectfully submitted,



Cynthia G. Tymeson
Attorney for Applicants
Reg. No. 34,745

Dade Behring Inc.
Legal Dept. – Patents
1717 Deerfield Rd.
Deerfield, IL 60015
Phone: 302-631-0360